

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

11 AYODELE AKINOLA, ) 3:14-cv-00222-HDM-WGC  
12 Plaintiff, )  
13 vs. ) ORDER  
14 DAVID SEVERNS, an individual, )  
15 MIKE PREMO, an individual, )  
16 Defendants. )

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17 Before the court is plaintiff Ayodele Akinola's motion for  
18 leave to file an amended complaint (#20). Defendants David Severns  
19 and Mike Premo responded (#22); plaintiff did not reply.

20 **Procedural History**

21 Plaintiff filed the original complaint on April 25, 2014 (#1),  
22 and a notice of suspension of plaintiff's counsel on June 17, 2014  
23 (#3). Defendant Mike Premo filed a motion to dismiss pursuant to  
24 Federal Rule of Civil Procedure 12(b) (6) on July 10, 2014 (#5).  
25 Thereafter, on July 23, 2014, the court stayed further action on  
26 this matter until further order of the court (#7).

27 Attorney Brian R. Morris entered a notice of appearance on  
28 behalf of plaintiff on August 25, 2014 (#10). Plaintiff

1 subsequently moved for an extension of time to effect service on  
 2 defendant David Severns (#11). The court granted the extension of  
 3 time (#12) and on September 23, 2014, Mr. Severns was served (#23).  
 4 On November 3, 2014, Mr. Severns joined Mr. Premo's motion to  
 5 dismiss (#14).

6 On November 17, 2014, the court vacated the stay and granted  
 7 plaintiff 20 days to respond to the motion to dismiss (#15). On  
 8 December 10, 2014, plaintiff filed its response to defendant's  
 9 motion to dismiss (#18), which consisted of a request to amend the  
 10 complaint or, in the alternative, additional time to respond to  
 11 defendants' motion to dismiss. After notice from the court that a  
 12 motion for leave to file an amended complaint would need to be  
 13 filed separately (#19), plaintiff filed the instant motion.

14 **Analysis**

15 Plaintiff requests the court allow an amended complaint to be  
 16 filed as a matter of course. Alternatively, plaintiff contends  
 17 justice requires the court to grant leave to amend.

18 **(a) Amending as a Matter of Course**

19 "A party may amend its pleading once as a matter of course  
 20 within: (A) 21 days after serving it, or (B) . . . 21 days after  
 21 service of a motion under Rule 12(b). . . ." Fed. R. Civ. P.  
 22 15(a)(1). In all other cases, "a party may amend its pleading only  
 23 with the opposing party's written consent or the court's leave.  
 24 The court should freely give leave when justice so requires." *Id.*  
 25 at (a)(2).

26 More than 21 days have passed since plaintiff served the  
 27 complaint on defendants on April 25, 2014. Additionally, 21 days  
 28 have passed from the service of defendant's motion to dismiss

1 pursuant to rule 12(b) on July 10, 2014.

2 Plaintiff asserts the stay entered by the court on July 23,  
 3 2014, reset the clock for the 21 day window in which a plaintiff  
 4 may amend its pleading as a matter of course. The court finds this  
 5 assertion unavailing. When the court vacated the stay on November  
 6 17, 2014, plaintiff had until November 27, 2014, to file an  
 7 amendment as a matter of course.<sup>1</sup> Plaintiff did not file an amended  
 8 complaint until December 10, 2014, in response to defendants'  
 9 motion to dismiss. Accordingly, plaintiff's amended complaint  
 10 cannot be filed pursuant to Fed. R. Civ. P. 15(a)(1).

11 **(b) Consent**

12 Plaintiff contends the court should permit the amendment under  
 13 Fed. R. Civ. P. 15(a)(2), which requires the opposing party's  
 14 written consent or the court's leave.

15 The defendants have not given their consent; instead,  
 16 defendants filed an opposition. Plaintiff seeks leave from the  
 17 court to file the amended complaint.

18 **(c) Leave of Court**

19 Rule 15(a)(2) provides that leave to amend a complaint should  
 20 be "freely given when justice so requires." Fed. R. Civ. P.  
 21 15(a)(2). "This policy is to be applied with extreme liberality."  
 22 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
 23 Cir. 2003). "Four factors are commonly used to determine the  
 24 propriety of a motion for leave to amend. These are: bad faith,  
 25 undue delay, prejudice to the opposing party, and futility of  
 26 amendment." *Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir. 2007).

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<sup>1</sup>Three days were added pursuant to Fed. R. Civ. P. 6(d).

1 (citations and internal quotation marks omitted). The factors are  
2 not to be given equal weight. *Eminence Capital*, 316 F.3d at 1052.  
3 Prejudice to the opposing party must be given the greatest weight.  
4 *Id.* Absent prejudice, or a strong showing of bad faith, undue  
5 delay, or futility of amendment, there exists a presumption under  
6 Rule 15(a) in favor of granting leave to amend. *Id.*

7 The party opposing the amendment carries the burden of showing  
8 why leave to amend should not be granted. See *DCD Programs, Ltd. v.*  
9 *Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). The trial court has  
10 discretion to grant or deny leave to amend. See *Cal. v. Neville*  
11 *Chem. Co.*, 358 F.3d 661, 673 (9th Cir. 2004).

12 Defendants oppose plaintiff's motion to amend, contending the  
13 amended complaint fails to add anything to the original complaint  
14 that is material to the issues raised in defendants' motion to  
15 dismiss. The court agrees.

16 Plaintiff's motion summarily states, "[t]he Amended Complaint  
17 addresses both Defendants' dismissal issues as well as the request  
18 for a more definite statement. The attached Amended Complaint  
19 contains certain statements that are in bold print to economically  
20 point out what was amended for the purpose of addressing the issues  
21 raised in Defendants' motion." Mot. #18 at 2:13-16. However, the  
22 added bold sections in the amended complaint are insufficient to  
23 justify granting the motion to amend. Consequently, the proposed  
24 amendment would be futile.

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1 **Conclusion**

2 Accordingly, and based on the foregoing, plaintiff's motion  
3 for leave to file an amended complaint (#20) is **DENIED**.

4 Plaintiff's alternative motion to extend the time to respond  
5 to defendant's motion to dismiss is **GRANTED**.

6 Plaintiff shall have until February 16, 2015, to file a  
7 response to defendants' motion to dismiss (#5). Defendants shall  
8 have until February 25, 2015, to file any reply.

9 IT IS SO ORDERED.

10 DATED: This 2nd day of February, 2015.

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13 UNITED STATES DISTRICT JUDGE

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